

Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (repealed)

TITLE III

PRODUCER ORGANISATIONS

CHAPTER II

Operational funds and operational programmes

Section 1

Value of marketed production

Article 52

Basis for calculation

- 1 For the purposes of this Chapter, the value of marketed production for a producer organisation shall be calculated on the basis of the production of members of producer organisations, for which the producer organisation is recognised.
- 2 The value of the marketed production shall include the production of members who leave or join the producer organisation. The Member States shall determine the conditions to avoid duplicate counting.
- 3 Member States may allow producer organisations to include the value of the by-products in the value of the marketed production.
- 4 The value of the marketed production shall include the value of market withdrawal disposed of as provided for in points (a) and (b) of Article 10(4) of Regulation (EC) No 1182/2007, estimated at the average price of those products marketed by the producer organisation in the previous year.
- 5 Only the production of the members of the producer organisation marketed by the producer organisation itself or in conformity with Article 3(3)(b) and (c) of Regulation (EC) No 1182/2007, shall be counted in the value of marketed production.
- 6 The marketed production shall be invoiced at the 'ex-producer organisation' stage:
 - a where applicable, as product which is packaged, prepared, or has undergone first-stage processing;
 - b excluding VAT; and
 - c excluding internal transport costs, where the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation is significant. Member States shall provide for reductions to be applied to the invoiced value for products invoiced at different stages of processing or delivery or transport.

7 The value of the marketed production may also be calculated at the ex-subsidary stage, on the same basis as set out in paragraph 6, provided that at least 90 % of the capital of the subsidiary is owned:

- a by the producer organisations or association of producer organisations; or
- b subject to Member State approval, by members, which are cooperatives, of the producer organisations or associations of producer organisations if doing so contributes to the objectives listed in Article 3(1)(b) and (c) of Regulation (EC) No 1182/2007.

8 Where a reduction in production occurs due to a climatic event or animal or plant diseases or pest infestations, any insurance indemnification received in respect of harvest insurance measures covered by Section 6 of Chapter III, or equivalent measures managed by the producer organisation, due to these causes may be included in the value of marketed production.

Article 53

Reference period

1 The annual ceiling on aid referred to in Article 10(2) of Regulation (EC) No 1182/2007 shall be calculated each year on the basis of the value of marketed production during a 12-month reference period to be determined by the Member States.

2 The reference period shall be fixed by the Member States for each producer organisation as:

- a a 12-month period, starting no earlier than 1 January three years preceding the year in which the operational programme is implemented and ending no later than 1 August of the same year; or
- b the average value of three subsequent 12-month periods starting no earlier than 1 January five years preceding the year in which the operational programme is implemented and ending no later than 1 August of the same year.

3 The 12-month period shall be the accounting period of the producer organisation concerned.

The reference period shall not vary during an operational programme except in duly justified situations.

4 Where a reduction in the value of a product has occurred due to reasons, duly justified to the satisfaction of a Member State, falling outside the responsibility and control of the producer organisation, the value of the marketed production referred to in paragraph 1 shall not be less than 65 % of the value of the product concerned in the previous reference period.

The reasons referred to in the first subparagraph shall be duly justified.

5 Where recently recognised producer organisations have insufficient historical data on marketed production for the application of paragraph 2 the value of marketed production may be considered to be the value of marketable production provided by the producer organisation for the purposes of recognition. This shall be calculated as the average value of the marketed production for the three previous years of all producers who are members of the producer organisation when the application for recognition is submitted.

6 Member States shall take the measures necessary to gather information on the value of marketed production of producer organisations which have not submitted operational programmes.

7 By way of derogation from paragraphs 1 and 6, the value of marketed production for the reference period shall be as calculated under the legislation applicable in this reference period.

Section 2

Operational Funds

Article 54

Management

Member States shall ensure that operational funds are managed in such a way that it is possible for external auditors to annually identify, check and certify their expenditure and revenue.

Article 55

Financing of operational funds

The financial contributions to the operational fund referred to in Article 8(1) of Regulation (EC) No 1182/2007 shall be determined by the producer organisation.

All producers shall have the opportunity to benefit from the operational fund, and all producers shall have the opportunity to participate democratically in decisions concerning the use of funds of the producer organisation and the financial contributions to the operational funds.

Article 56

Communication of estimated amount

Producer organisations shall communicate the estimated amounts of Community contribution, and the contribution of its members and of the producer organisation itself to the operational funds for the following year to the Member State by 15 September at the latest, together with the operational programmes or requests for approval of their amendments.

Member States may set a later date than 15 September.

Calculation of the estimated amount of operational funds shall be based on the operational programmes and the value of marketed production. The calculation shall be split between expenditure for crisis prevention and management measures and other measures.

Section 3

Operational Programmes

Article 57

National strategy

1 The overall structure and content of the national strategy referred to in Article 12(2) of Regulation (EC) No 1182/2007 shall, from 1 January 2009, be established in accordance with the guidelines set out in Annex VII. Prior to that date, Member States shall determine its overall structure and content. It may be comprised of regional elements.

The national strategy shall integrate all the decisions taken and provisions adopted by the Member State in application of Title III of Regulation (EC) No 1182/2007 and this Title.

2 The national strategy, including the integration of the national framework referred to in Article 12(1) of Regulation (EC) No 1182/2007, shall be established before draft operational programmes are submitted in any given year. The national framework shall be integrated after having been submitted to the Commission and if appropriate, after having been amended, in accordance with the second subparagraph of Article 12(1) of Regulation (EC) No 1182/2007.

3 An analysis of the initial situation shall form part of the process of drawing up the national strategy and be carried out under responsibility of the Member State. It shall identify and assess the needs to be met, the ranking of the needs in terms of priorities, the goals to be achieved through the operational programmes to meet those priority needs, the results expected and the quantified targets to be attained in relation to the initial situation, and lay down the most appropriate instruments and actions for attaining those objectives.

4 Member States shall also ensure monitoring and evaluation of the national strategy and its implementation through operational programmes.

The national strategy may be amended, in particular in the light of monitoring and evaluation. Such amendments shall be made before the submission of draft operational programmes in any given year.

5 Member States shall set out in the national strategy maximum percentages of the fund which may be spent on any individual measure and/or type of action and/or expenditure in order to ensure an appropriate balance between different measures.

Article 58

National framework for environmental actions

1 In addition to the notification foreseen under Article 12(1) of Regulation (EC) No 1182/2007 Member States shall also notify the Commission of any amendments to the national framework which shall be subject to the procedure set out in the second subparagraph of Article 12(1) of Regulation (EC) No 1182/2007. The Commission shall make the framework available to other Member States by the means it considers appropriate.

2 The framework shall set out a non-exhaustive list of environmental actions and the conditions therefore applicable in the Member State for the purposes of Article 9(3) of Regulation (EC) No 1182/2007 and, for each environmental action selected, shall indicate:

- a the specific commitment or commitments entailed; and
- b the justification of the action based on its expected environmental impact in relation to environmental needs and priorities.

Article 59

Complementary Member State rules

Member States may adopt rules complementing Regulation (EC) No 1182/2007 and this Regulation concerning the eligibility of measures, actions or expenditure under operational programmes.

Article 60

Relationship with rural development programmes

1 No support under the Member State's rural development programme or programmes approved under Regulation (EC) No 1698/2005, shall be granted to actions which are covered by measures set out by this Regulation, subject to paragraph 2.

2 Where support under Regulation (EC) No 1698/2005 has exceptionally been granted in accordance with Article 5(6) of that Regulation, to measures which would be potentially eligible under this Regulation, Member States shall ensure that a beneficiary may receive support for a given action only under one scheme.

To that end, when Member States, include measures containing such exceptions in their rural development programmes, they shall ensure that the national strategy as referred to in Article 57 of this Regulation lays down the criteria and administrative rules which they will apply in the rural development programmes.

Where relevant, and without prejudice to provisions of Articles 10(1) and (3) and 11 of Regulation (EC) No 1182/2007, the level of support for measures covered by this Regulation shall not exceed that applicable for the measures under the rural development programme.

Support for environmental actions, other than acquisition of fixed assets, shall be limited to the maximum amounts laid down in the Annex to Regulation (EC) No 1698/2005 for agri-environment payments. These amounts may be increased in exceptional cases taking account of specific circumstances to be justified in the national strategy as referred to in Article 57 of this Regulation.

Article 61

Contents of operational programmes and eligible expenditure

- 1 Operational programmes shall include the following:
 - a a description of the initial situation, based, where relevant, on the baseline indicators listed in Annex XIV;
 - b the objectives of the programme, bearing in mind the outlook for production and outlets, and an explanation of how the programme contributes to the national strategy and confirmation that it is consistent with the national strategy, including in its balance between activities. The description of the objectives shall refer to objectives defined in

- the national strategy and indicate measurable targets, so as to facilitate the monitoring of progress gradually made in implementing the programme;
- c a detailed description of the measures, including those for crisis prevention and management, containing separate actions, to be taken and the means for attaining those objectives in each year of implementation of the programme. The description shall indicate the extent to which different measures proposed:
- (i) complement and are consistent with other measures, including measures financed or eligible for support by other European Community funds, and in particular rural development support. In this respect, a specific reference shall also be made, if appropriate, to measures carried out under previous operational programmes;
 - (ii) do not entail any risk of double financing by European Community funds;
- d the duration of the programme; and
- e the financial aspects, namely:
- (i) the method of calculation and the level of financial contributions;
 - (ii) the procedure for financing the operational fund;
 - (iii) information necessary to justify different levels of contribution; and
 - (iv) the budget and timetable for undertaking operations for each year of implementation of the programme.

2 Various environmental actions may be combined provided that they are complementary and compatible.

Where environmental actions are combined, the level of support shall take account of the specific income foregone and additional costs resulting from the combination.

3 Investments, including those under leasing contracts, whose repayment period exceeds the length of the operational programme may be carried over to a subsequent operational programme on duly justified economic grounds, and in particular in cases where the fiscal depreciation period is longer than five years.

Where investments are replaced, the residual value of the investments replaced shall be:

- a added to the operational fund of the producer organisation; or
- b subtracted from the cost of the replacement.

Investments or actions may be implemented on individual holdings of members of the producer organisation, provided that they contribute to the objectives of the operational programme. If the member leaves the producer organisation, Member States shall ensure that the investment or its residual value is recovered, unless the Member State provides otherwise.

4 Operational programmes shall not include actions or expenditure referred to in the list set out in Annex VIII.

5 Expenditure under operational programmes eligible for aid shall be restricted to the actual costs incurred. However, Member States may instead fix standard flat rates in advance and in a duly justified way in the following cases:

- a where such standard flat-rates are referred to in Annex VIII;

- b for additional per-kilometre external transport costs, compared to road haulage costs, incurred when using rail and/or ship transport as part of a measure to respect the environment; and
- c for additional costs and income foregone resulting from environmental actions, calculated in conformity with Article 53(2) of Regulation (EC) No 1974/2006.

Member States shall review such rates at least every five years.

6 In order for an action to be eligible, more than 50 % by value of the products concerned by it shall be those for which the producer organisation is recognised. To be counted in the 50 %, the products shall come from the producer organisation's members or members of another producer organisation. The appropriate rules in Article 52 shall apply to the calculation of the value.

Article 62

Documents to be submitted

Operational programmes shall be accompanied by, in particular:

- (a) evidence of the setting-up of an operational fund;
- (b) a written undertaking from the producer organisation to comply with Regulation (EC) No 1182/2007 and this Regulation; and
- (c) a written undertaking from the producer organisation that it has and will not receive, directly or indirectly, any other Community or national funding in respect of actions qualifying for aid under this Regulation.

Article 63

Partial operational programmes

1 Pursuant to Article 5 of Regulation (EC) No 1182/2007 a Member State may authorise an association of producer organisations to present a partial operational programme of its own, which shall consist of actions identified, but not implemented by two or more member producer organisations in their operational programmes.

2 The same rules shall apply to partial operational programmes as to other operational programmes and they shall be considered together with the operational programmes of the member producer organisations.

3 Member States shall ensure that:

- a the actions are fully financed from contributions of member producer organisations paid out of the operational funds of those organisations;
- b the actions and the corresponding financial participation are listed in the operational programme of each participating producer organisation; and
- c there is no risk of duplicate aid and that Article 60 is applied *mutatis mutandis*.

Article 64

Time limit for submission

Operational programmes shall be submitted for approval by the producer organisation to the competent authority in the Member State in which the producer organisation has its headquarters by 15 September at the latest of the year preceding that in which they are to be implemented. However, the Member States may postpone that date.

When a legal entity or clearly defined part of a legal entity, including a producer group, submits an application for recognition as a producer organisation it may at the same time submit the operational programme referred to in the first paragraph for approval. Approval of the programme shall be subject to obtainment of recognition no later than on the final date laid down in Article 65(2).

Article 65

Decision

- 1 The competent national authority shall, as appropriate:
 - a approve amounts of funds and programmes which meet the requirements of Regulation (EC) No 1182/2007 and those of this Chapter;
 - b approve the programmes, on condition that certain amendments are accepted by the producer organisation; or
 - c reject the programmes or part of the programmes.
- 2 The competent national authority shall take decisions on programmes and funds by 15 December at the latest of the year in which they are submitted.

Member States shall notify the producer organisations of those decisions by 15 December at the latest.

However, for duly justified reasons, the competent national authority may take a decision on operational programmes and funds by 20 January at the latest following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.

Article 66

Amendments to operational programmes for subsequent years

1 Producer organisations may request amendments to operational programmes, including if necessary an extension of its duration up to a total duration of five years, by 15 September at the latest to be applied from 1 January of the following year.

However, Member States may postpone the date for submitting requests.

2 Requests for amendments shall be accompanied by supporting documents giving the reason, nature and implications of the changes.

3 The competent authority shall take decisions on requests for amendments to operational programmes by 15 December at the latest.

However, for duly justified reasons, Member States may take a decision on amendments to operational programmes not later than 20 January following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.

Article 67

Amendments to operational programmes during the year

- 1 Member States may authorise amendments to operational programmes during the year, under conditions to be determined by them.
- 2 Producer organisations may be authorised by the competent national authority, during the year to:
 - a implement their operational programmes in part only;
 - b change the contents of the operational programme, including if necessary the extension of its duration up to a total duration of five years;
 - c increase the amount of the operational fund by a maximum of 25 %, and decrease it by a percentage to be fixed by Member States, of the amount initially approved provided the overall objectives of the operational programme are maintained. Member States may increase this percentage in case of mergers of producer organisations as referred to in Article 31(1).
- 3 Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent national authority. These changes are only eligible for aid if they are communicated by the producer organisation to the competent authority without delay.

Article 68

Operational programmes' format

- 1 Operational programmes shall be implemented in annual periods running from 1 January to 31 December.
- 2 Operational programmes approved on 15 December at the latest shall be implemented from 1 January of the following year.

The implementation of programmes approved after 15 December shall be postponed for one year.

By way of derogation from the first and second subparagraphs of this paragraph, where the third subparagraph of Article 65(2) or the second subparagraph of Article 66(3) apply, the implementation of operational programmes approved in accordance with those provisions shall start not later than 31 January following their approval.

Section 4

Aid

Article 69

Approved amount of aid

Member States shall notify producer organisations and associations of producer organisations of the approved amount of aid, as required by Article 13(3) of Regulation (EC) No 1182/2007, by 15 December at the latest.

Where the third subparagraph of Article 65(2) or the second subparagraph of Article 66(3) of this Regulation apply, Member States shall give notification of the approved amount of aid not later than 20 January.

Article 70

Applications

1 Producer organisations shall submit an application for aid or the balance thereof to the competent authority for each operational programme for which aid is requested on 15 February at the latest of the year following that for which the aid is requested.

2 Applications shall be accompanied by supporting documents showing:

- a the aid requested;
- b the value of the marketed production;
- c the financial contributions levied on its members and those of the producer organisation itself;
- d the expenditure incurred in respect of the operational programme;
- e the expenditure concerning crisis prevention and management broken down by actions;
- f the proportion of the operational fund spent on crisis prevention and management broken down by actions;
- g compliance with Article 9(2) and Article 9(3)(a) or (b) and Article 10 of Regulation (EC) No 1182/2007;
- h a written undertaking that it has not received any duplicate Community or national funding in respect of measures and/or operations qualifying for aid under this Regulation; and
- i in the case of an application for payment based on a standard flat-rate as referred to in Article 61(4), proof of the implementation of the action concerned.

3 Applications may cover expenditure programmed but not incurred if the following elements are proved:

- a the operations concerned could not be carried out by 31 December at the latest of the year of implementation of the operational programme for reasons beyond the control of the producer organisation concerned;
- b those operations can be carried out by 30 April at the latest of the following year at the latest; and
- c an equivalent contribution from the producer organisation remains in the operational fund.

The aid shall be paid and the security lodged in accordance with Article 72(3) shall be released only on condition that proof of implementation of the programmed expenditure referred to in point (b) of the first subparagraph is provided by 30 April at the latest of the year following that for which the expenditure in question was programmed, and on the basis of the entitlement to the aid actually established.

4 Where applications are submitted after the date provided for in paragraph 1, the aid shall be reduced by 1 % for each day late.

In exceptional and duly justified cases, the competent authority may accept applications after the date provided for in paragraph 1, if the necessary checks have been carried out and the time limit for payment provided for in Article 71 is complied with.

Article 71

Payment of the aid

Member States shall pay the aid by 15 October at the latest of the year following the year of implementation of the programme.

Article 72

Advance payments

1 Member States may permit producer organisations to apply for the advance payment of the part of the aid corresponding to the foreseeable expenditure resulting from the operational programme during the three- or four-month period starting in the month in which the application is submitted.

2 Applications for advance payments shall be submitted as decided by the Member State, either on three-monthly basis in January, April, July and October or on a four-monthly basis in January, May and September.

Total advance payments made for a given year may not exceed 80 % of the initially approved amount of aid for the operational programme.

3 Advances shall be paid subject to the lodging of a security equivalent to 110 % thereof in accordance with Regulation No 2220/85.

Conditions shall be provided for by the Member States to ensure that financial contributions to the operational fund have been levied in accordance with Article 54 and Article 55 of this Regulation and previous advance payments have actually been spent.

4 Applications for the release of securities may be submitted during the current programme year and shall be accompanied by the relevant supporting documents.

Securities shall be released in respect of up to 80 % of advances paid.

5 The primary requirement within the meaning of Article 20 of Regulation (EC) No 2220/85 shall cover the performance of the operations set out in the operational programmes subject to the undertakings provided for in Article 62(b) and (c) of this Regulation.

In the event of failure to comply with the primary requirement or of serious failure to meet the obligations provided for in Article 62(b) and (c) the security shall be forfeited,

without prejudice to other penalties to be applied in accordance with Section 3 of Chapter V.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

6 Member States may set a minimum amount and the deadlines for advance payments.

Article 73

Partial payments

Member States may permit producer organisations to apply for the payment of the part of the aid corresponding to the expenditure resulting from the operational programme.

Applications may be submitted at any time, but no more than three times in any given year. They shall be accompanied by suitable supporting documents.

Total payments in respect of applications for parts of the aid may not exceed 80 % of the initially approved amount of aid for the operational programme or of the real expenditure, whichever is less.

Member States may set a minimum amount and the deadlines for partial payments.